

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES PERRY,

*

Plaintiff,

*

vs.

* Civil Action No.:

FLEETWOOD ENTERPRISES, INC.,
FLEETWOOD HOMES OF GEORGIA,
INC., and Fictitious
Defendants "A", "B", and "C",

* 2:06-cv-00502-MEF

*

*

Defendants.

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION TO DISMISS,
AND RENEWED REQUEST FOR ORAL ARGUMENT**

Defendants Fleetwood Enterprises, Inc. and Fleetwood Homes of Georgia, Inc., (hereinafter "Fleetwood"), by and through their undersigned counsel, respectfully move this Court for leave to file a supplemental brief in support of Fleetwood's Motion to Dismiss, and renew their request for oral argument, on the following grounds:

Preemption of the Plaintiff's claims is an important issue of first impression

Fleetwood respectfully requests that this Court permit the filing of a supplemental brief in support of Fleetwood's motion to dismiss, and that the Court set the matter for a hearing to consider oral arguments of the parties. This case involves allegations that manufactured homes built by the defendants in one state, and sold in another state, are defective. Plaintiff alleges various causes of action, including several state law claims.

Fleetwood seeks dismissal of this case on the grounds that all of the Plaintiff's state claims are barred by federal preemption. The Federal Manufactured Home

Construction and Safety Standards Act, 42 U.S.C. § 5401 *et seq.* (“the Act”) and related federal regulations, including the Manufactured Home Construction and Safety Standards and the Manufactured Home Procedural and Enforcement Regulations, 24 CFR §3280 *et seq.* (“the regulations”), thoroughly occupy the field of regulating manufactured housing construction, and expressly preempt state law actions. Moreover, state law actions that conflict with the Act and the regulations – namely, by punishing a manufacturer for choosing one of three construction methods mandated by federal law – are impliedly preempted.

Whether the Plaintiff’s claims are preempted by the Act and the regulations is an issue of first impression in this Circuit, and in the Alabama state courts. Counsel for the Plaintiff has filed or submitted twelve (12) virtually identical claims against Fleetwood, in state court (including the present case, which was removed to this Court) and in arbitration. In addition, two other virtually identical claims have been submitted by other attorneys, for a present total of fourteen (14) such cases. Plaintiff’s counsel also recently submitted a new complaint to one of the arbitrators, in which the three named plaintiffs/purported class representatives seek to represent “thousands of homeowners.” Accordingly, these claims currently are pending in federal court, in state court, and in arbitration, and, potentially, in a statewide class arbitration with thousands of class members.

Fleetwood has moved to dismiss each claim filed by this Plaintiff’s counsel on the basis of federal preemption. Counsel for Fleetwood argued Fleetwood’s motion to dismiss before the Montgomery County Circuit Court on October 10, 2006. The state court judge indicated that he may wait until this Court makes a ruling on the federal

preemption issue before he makes a ruling. Undersigned counsel also expects other courts and arbitrators to do the same. In other words, the state courts and arbitrators will look to this Federal Court to make a decision as to federal preemption over the state law claims.

Need for full briefing and oral arguments

Because of the importance of this issue, and the number of potential claims, Fleetwood respectfully submits that this Court should decide the preemption issue only after full briefing by the parties, and with the assistance of oral argument from the parties. Since this Court's Order of July 10, 2005 (Doc. 5), which allowed, but did not require Fleetwood to file a reply to the Plaintiff's response to Fleetwood's motion to dismiss, two things have happened. First, Plaintiff's counsel has raised the stakes substantially by seeking, via arbitration, certification of a class of "thousands of homeowners" with claims similar to the Plaintiff's claims. Second, a state court judge from the Montgomery County Circuit Court has stated that he may await this Court's decision on the federal preemption issue before issuing a final ruling in his case. This Court is the appropriate body to decide this issue, and, given the far-reaching ripple effects of that ultimate decision, full briefing and oral arguments are warranted in this case.

WHEREFORE, Fleetwood respectfully requests that this Honorable Court grant leave for Fleetwood to file a supplemental brief in support of its motion to dismiss, and allow oral arguments on that motion.

DATED this 16th day of October, 2006.

Respectfully Submitted,

s/ David Walker
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CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of October, 2006, served a true and correct copy of the above and foregoing instrument upon counsel of record in this proceeding by electronic service using the CM/ECF system and by placing the same in the United States Mail, properly addressed and first-class postage prepaid to the following party:

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